

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHTEK TECHNOLOGY
CORPORATION,

Plaintiff,

v.

UPI SEMICONDUCTOR
CORPORATION, *et al.*,

Defendants.

No. C 09-05659 WHA

**ORDER GRANTING IN
PART MING CHEN'S
MOTION TO DISMISS
AND VACATING HEARING**

INTRODUCTION

In this patent and copyright infringement action, defendant Ming Chen moves to dismiss all claims against him for inadequate pleading pursuant to FRCP 12(b)(6). This order partially grants the motion.

STATEMENT

The operative complaint in this action was filed by the Taiwanese company Richtek Technology Corporation and its wholly-owned United States subsidiary, Richtek USA, Inc.¹ The complaint named seventeen individuals and five companies as defendants, and alleged seven claims for relief in total. After the first round of motions to dismiss, all claims against fourteen Taiwanese individuals were dismissed for lack of personal jurisdiction, and all claims for breach of contract and trade-secret misappropriation were dismissed for lack of subject-matter

¹The Third Amended Complaint, filed on September 28, 2010, currently is the operative complaint in this action. Richtek's motion for leave to file a fourth amended complaint will be heard on February 10, 2011.

1 jurisdiction. After the second round of motions to dismiss, the copyright claim against Maxchip
2 Electronics Corporation was dismissed for inadequate pleading pursuant to FRCP 12(b)(6), and
3 jurisdictional discovery was allowed regarding personal jurisdiction over defendant Powerchip
4 Technology Corporation. Because Richtek USA was a complaining plaintiff only for the trade-
5 secret-misappropriation claim, which was dismissed in the first round of motions, Richtek USA is
6 no longer a party to this action. The only remaining claims asserted against Ming Chen are
7 Richtek Technology's accusations that Ming Chen infringed three United States patents
8 (counts 1–3) and various United States copyrights (count 7) that belong to Richtek Technology
9 (Dkt. Nos. 165, 212, 235, 236).

10 The factual theory of Richtek's complaint is that Taiwanese former employees of Richtek
11 Technology, along with Powerchip and uPI Semiconductor Corporation (both Taiwanese
12 companies), "devised a complex and elaborate scheme to steal, punder, and cart-away Richtek's
13 invaluable trade secret and confidential information" (Dkt. No. 79 ¶ 62). Using proprietary
14 documents and information stolen from their former employer, the individual defendants
15 allegedly designed competing power-management products that infringed plaintiffs' intellectual
16 property rights. Defendant uPI allegedly then developed and sold these products in conjunction
17 with other defendants. Richtek claims that it has been injured by sales of these power-
18 management products to customers in California and the United States.

19 Defendant Ming Chen now brings a motion to dismiss counts one through four and seven
20 for failure to allege facts sufficient to state a cognizable claim against him pursuant to
21 FRCP 12(b)(6). Unlike the fourteen individual defendants already dismissed for lack of personal
22 jurisdiction, Ming Chen is not a Taiwanese former employee of Richtek. Ming Chen is a citizen
23 of Canada. He is allegedly "a former employee of AMD and an employee of ATi when AMD
24 acquired ATi sometime in 2006" (Compl. ¶ 59). Neither AMD nor ATi is a defendant in this
25 action. AMD allegedly is a Delaware corporation that acquired ATi Technology ULC in 2006
26 and absorbed ATi into its Graphics and Media Processor Division. According to Richtek, "[t]his
27 divisions designs, develops, tests, markets, offers for sale, and/or sells the ATI Radeon HD
28 graphics processor units (GPUs) and related graphics cards or boards ('AMD's Radeon HD

1 graphics cards') in the United States and in this district that incorporate at least uPI's Power
2 Management Products" (Compl. ¶ 37–38). Ming Chen allegedly "was the Manager of Graphics
3 Board Development for AMD/ATi in 2006 and had substantial influence over which IC vendor
4 AMD/ATi would use on its graphics boards and reference designs" (Compl. ¶ 59). Additionally,
5 the complaint states that "Ming Chen became acquainted with former Richtek employees James
6 Chang and Amanda Dai through the business relations between and among Richtek, AMD and
7 ATi" and that "Ming Chen or a close family member had an undisclosed financial interest in uPI
8 which resulted in Ming Chen's being terminated from AMD" (Compl. ¶ 60–61). No other
9 specific facts regarding Ming Chen or his role in the allegedly infringing activities are pled in the
10 complaint. This order follows full briefing on the motion.

11 ANALYSIS

12 Richtek's trade-secret-misappropriation claim already has been dismissed for lack of
13 subject-matter jurisdiction (Dkt. No. 212). Accordingly, Ming Chen's motion to dismiss that
14 claim pursuant to FRCP 12(b)(6) is **DENIED AS MOOT**. Ming Chen's motions to dismiss the
15 copyright- and patent-infringement claims will be considered in turn.

16 A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims
17 alleged in the complaint. *See Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.
18 1995). All material allegations of the complaint are taken as true and considered in the light most
19 favorable to the nonmoving party. *Ibid.* "While a complaint attacked by a Rule 12(b)(6) motion
20 to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the
21 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a
22 formulaic recitation of the elements of a cause of action will not do. Factual allegations must be
23 enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550
24 U.S. 544, 555 (2007) (citations omitted). In short, the complaint must contain sufficient factual
25 matter to "state a claim to relief that is plausible on its face." *Ibid.* at 570.

26 Although materials outside of the pleadings generally should not be considered without
27 converting the motion to a motion for summary judgment, a district court may consider all
28 materials submitted as part of the complaint, including documents to which the complaint

specifically refers, even if they are not physically appended to the complaint. *Hal Roach Studios, Inc. v. Richard Feiner and Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). Copies of the three asserted patents and various copyright registrations are appended to the Third Amended Complaint as exhibits (Dkt. No. 79).

1. Copyright-Infringement Claim for Relief

In order to establish copyright infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *Rice v. Fox Borad. Co.*, 330 F.3d 1170, 1174 (9th Cir. 2003). As to the second element, Richtek's complaint makes only conclusory statements, reciting the statutory acts that constitute copyright infringement without providing any factual allegations to identify Ming Chen's allegedly infringing acts or works. The complaint describes the works whose copyrights allegedly are infringed ("design schematics, software code, mask works, data sheets and other copyrightable expressions related to Richtek's proprietary design-in process for semiconductors") but provides no such description of the acts or works that allegedly infringe them (Dkt. No. 79 ¶ 75). The closest the complaint comes — and the only portion of the complaint Richtek identifies as pleading acts or works by Ming Chen that infringe its copyrights — are paragraphs 77 and 78:

77. Upon information and belief, Defendants uPI, Powerchip, Maxchip, Silicon Xtal, XYZ Companies 1–4, the Former Richtek Employees, Former AMD Employee Ming Chen, and John Does 1–10 have had access to Richtek's Copyright Works.

78. Upon information and belief, Defendants uPI, Powerchip, Maxchip, Silicon Xtal, XYZ Companies 1–4, Former Richtek Employees, Former AMD Employee Ming Chen, and John Does 1–10 have made unauthorized copies, prepared derivative works and distributed copies of Richtek's copyright works ("the Accused Works") all without Richtek's permission.

(Dkt. No. 79 ¶ 77–78). As noted in the order dismissing Richtek's copyright-infringement claim against defendant Maxchip Electronics Corporation, Richtek's argument that these paragraphs put defendants on notice of its copyright infringement contentions is laughable. Equally laughable is Richtek's new assertion that it has "provided sufficient factual allegations that are plausible to support its copyright claims" (Opp. 7). These paragraphs do not identify even a category of acts or works by Ming Chen accused of infringement. The complaint alleges that Ming Chen worked

1 for a company in the distribution chain for the products accused of patent infringement, but it
2 does not provide any facts regarding how Ming Chen — in the personal capacity in which he is
3 named as a defendant — allegedly infringed Richtek’s copyrights. Richtek’s copyright claim
4 against Ming Chen therefore is not “plausible on its face.” Bald recitations of legal conclusion
5 like those contained in paragraphs 77–78 of the Third Amended Complaint do not state a claim
6 upon which relief can be granted. Ming Chen’s motion to dismiss the copyright-infringement
7 claim against him (count 7) is **GRANTED**.

8 **2. Patent-Infringement Claims for Relief**

9 Counts 1–3 of the Third Amended Complaint accuse Ming Chen, in his personal capacity,
10 of infringing three Richtek patents. Section 271(a) of the United States Patent Act states that
11 “whoever without authority makes, uses, offers to sell, or sells any patented invention, within the
12 United States or imports into the United States any patented invention during the term of the
13 patent therefor, infringes the patent.” 35 U.S.C. 271(a). A complaint for patent infringement
14 should identify the patents in dispute, allege ownership of them, and allege the act that constitutes
15 infringement. *See Lans v. Digital Equip. Corp.*, 252 F.3d 1320, 1328 (Fed. Cir. 2001). Richtek’s
16 Third Amended Complaint does not provide any factual allegations of acts committed by Ming
17 Chen in his individual capacity that might constitute infringement.

18 The Third Amended Complaint accuses Ming Chen of patent infringement, along with all
19 other defendants, only in formulaic statements that defendants “directly and/or indirectly
20 infringe” all three asserted patents “by designing, soliciting, promoting, testing, marketing,
21 offering for sale, or selling infringing Power Management Products and products containing them
22 in this district and elsewhere in the United States” (Dkt. No. 79 ¶¶ 83, 91, 99). The complaint
23 provides factual allegations regarding Ming Chen’s role as an employee of companies in the
24 distribution chain for the accused products, but it does not identify any acts of alleged
25 infringement that may be attributed to Ming Chen in his individual capacity.

26 Many of the alleged acts of patent infringement that Richtek points to in its opposition are
27 acts committed by various companies, not by Ming Chen. For example, Richtek highlights that
28 AMD allegedly “qualifies uPI’s Power Management Products for incorporation and use in

1 AMD's Radeon HD graphics cards [and other products]" and then encourages defendant Sapphire
2 Technology Limited to "manufacture, import, offer to sell, and sell after importation into the
3 United States and in this district AMD's Radeon HD graphics cards [and other products]"
4 (Opp. 3–4). These acts are pled against AMD and Sapphire without any mention of Ming Chen,
5 and Richtek provides no reason why they should be attributed to Ming Chen.

6 The operative complaint does provide a few factual allegations of infringing acts by Ming
7 Chen, but all of these acts were done in the course of Ming Chen's employment by AMD or ATi.
8 Even Richtek's opposition brief is unable to avoid this fact; in summarizing Richtek's
9 infringement allegations against Ming Chen, it states: "Richtek has likewise put Ming Chen on a
10 fair notice of his alleged acts of infringement — *e.g.*, as a Manager of Graphics Board
11 Development for AMD/ATi in the relevant period, he exercised substantial influence over
12 AMD's decisions to qualify the infringing products for incorporation and use in AMD's
13 infringing Radeon HD graphics cards that were sold or offered for sale in the United States."
14 (Opp. 6). Based on this theory, Richtek cannot state a patent-infringement claim against Ming
15 Chen as an individual, and indeed, based on the factual allegations in the Third Amended
16 Complaint, Richtek has not stated a patent-infringement claim against Ming Chen.

17 Richtek sued Ming Chen in his individual capacity for infringing three Richtek patents,
18 but there are no factual allegations in Richtek's complaint to support these patent-infringement
19 claims. As such, Richtek's claims against Ming Chen for patent infringement are not plausible on
20 their face. Ming Chen's motion to dismiss all patent-infringement claims against him
21 (counts 1–3) is **GRANTED**.

22 CONCLUSION

23 Ming Chen's motion to dismiss all claims against him for failure to state a claim upon
24 which relief can be granted is **GRANTED IN PART AND DENIED IN PART**. Ming Chen's motion to
25 dismiss the trade-secret-misappropriation claim against him is **DENIED AS MOOT**. Ming Chen's
26 motion to dismiss the patent- and copyright-infringement claims against him is **GRANTED**.
27 Claims 1–3 and 7 against Ming Chen are **DISMISSED**. Accordingly, Ming Chen is no longer a
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1 defendant in this action. The hearing on Ming Chen's motion to dismiss set for January 27, 2011,
2 is hereby **VACATED**.

3 In order to expedite the process of finalizing the pleadings, an exception will be made to
4 the current stay against filing new motions. Within **FOURTEEN CALENDAR DAYS**, plaintiffs may
5 file a motion on the normal 35-day track seeking leave to file amended pleadings that might save
6 any claims dismissed by this order or previous orders. A proposed amended complaint must be
7 appended to such motion, and the motion should explain clearly why the amended complaint
8 overcomes the deficiencies stated herein. If the proposed amendments do not address these
9 deficiencies, they will not be allowed.

10 Richtek is hereby put on notice that a dramatic change in its approach to the pleadings is
11 due. The vague and overbroad style of pleading Richtek has employed in this action to date has
12 precipitated extensive motion practice that would have been largely unnecessary if Richtek had
13 filed a better complaint. The instant motion to dismiss is the *seventh* one decided this month in
14 this action, and it should not have been required in the first place. Going forward, counsel must
15 make a comprehensive and diligent effort to avoid unnecessary motion practice.

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17 **IT IS SO ORDERED.**

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19 Dated: January 19, 2011.

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22 WILLIAM ALSUP
23 UNITED STATES DISTRICT JUDGE
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